

APPEAL NO. 031175
FILED JUNE 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 2, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th (October 30, 2002, through January 28, 2003) or 13th (January 29 through April 29, 2003) quarters. The claimant appealed, arguing that the determination is against the great weight and preponderance of the evidence and that the determination is error as a matter of law. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(2). The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on March 23, 1999, with an impairment rating of 15%; that she has not commuted any portion of her impairment income benefits; that the qualifying period for the 12th quarter of SIBs is from July 18 through October 16, 2002; and that the qualifying period for the 13th quarter is from October 17, 2002 through January 15, 2003. The claimant based her request for entitlement to SIBs for the 12th and 13th quarters on the assertion that she participated in a vocational rehabilitation program with the Texas Rehabilitation Commission (TRC).

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period.

Rule 130.101(8) states that a full-time vocational rehabilitation program is:

Any program, provided by the [TRC] or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the

injured employee's responsibilities for the successful completion of the plan.

There is an individualized plan for employment (IPE) in the record in this case. The IPE is dated October 15, 2001. It lists an employment goal, lists the services to be provided by the TRC, the start and ending dates for the services, and employee's responsibilities. The evidence establishes that the claimant was enrolled in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period for the 12th quarter and that she was satisfactorily participating in such program. The IPE shows that vocational counseling and guidance were provided by a TRC counselor from October 15, 2001 through October 14, 2002, and that (company 1) and (company 2) was purchased by the TRC and services were provided from October 15, 2001, through January 15, 2002. The hearing officer's finding that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work is against the great weight and preponderance of the evidence. The hearing officer's finding that the claimant is not entitled to SIBs for the 12th quarter is reversed a new decision rendered that the claimant is entitled to SIBs for the 12th quarter.

The IPE indicates that services were provided from October 15, 2001, to October 14, 2002. The qualifying period for the 13th quarter was from October 17, 2002, through January 15, 2003. The record does not contain evidence that the claimant was enrolled in a full time vocational rehabilitation program during the qualifying period for the 13th quarter. Although there is some evidence that the TRC continued to provide job leads for the claimant during the 13th quarter qualifying period and that the claimant followed up on such leads, we have held that good faith requirement cannot be met by merely participating in a job training program which is merely being monitored but not sponsored by the TRC. See Texas Workers' Compensation Commission Appeal No. 010497-s, decided April 17, 2001. It is undisputed that the claimant did not look for work in each week of the qualifying period. There is sufficient evidence in the record to support the hearing officer's finding that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the 13th quarter. The hearing officer's determination that the claimant is not entitled to SIBs for the 13th quarter is affirmed.

We reverse the determination that the claimant is not entitled to SIBs for the 12th quarter and a new decision is rendered that the claimant is entitled to SIBs for the 12th quarter. We affirm the determination that the claimant is not entitled to SIBs for the 13th quarter.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge